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Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**
For FY 2006☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT**(\$)**0****Complete if Known**

| | |
|----------------------|------------------|
| Application Number | 10/058,832 |
| Filing Date | January 30, 2002 |
| First Named Inventor | Paul WANNINGER |
| Examiner Name | A. Felton |
| Art Unit | 3641 |
| Attorney Docket No. | 32140-177788 |

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: **22-0261** Deposit Account Name: **Venable LLP**

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

| Application Type | FILING FEES | | SEARCH FEES | | EXAMINATION FEES | | Fees Paid (\$) |
|------------------|-------------|-----------------------|-------------|-----------------------|------------------|-----------------------|----------------|
| | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | |
| Utility | 300 | 150 | 500 | 250 | 200 | 100 | |
| Design | 200 | 100 | 100 | 50 | 130 | 65 | |
| Plant | 200 | 100 | 300 | 150 | 160 | 80 | |
| Reissue | 300 | 150 | 500 | 250 | 600 | 300 | |
| Provisional | 200 | 100 | 0 | 0 | 0 | 0 | |

2. EXCESS CLAIM FEES

| Fee Description | Fee (\$) | Small Entity Fee (\$) |
|--|----------|-----------------------|
| Each claim over 20 (including Reissues) | 50 | 25 |
| Each independent claim over 3 (including Reissues) | 200 | 100 |
| Multiple dependent claims | 360 | 180 |

Total Claims Extra Claims Fee (\$) Fee Paid (\$)

_____ - 20 = _____ x 50 = _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims Extra Claims Fee (\$) Fee Paid (\$)

_____ - 3 = _____ x 200 = _____

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$) Fee Paid (\$)

_____ - 100 = _____ / 50 _____ (round up to a whole number) x _____ = _____

4. OTHER FEE(S)Fees Paid (\$)

\$

| | | | |
|-------------------|---------------------|-----------------------------------|----------------|
| SUBMITTED BY | | | |
| Signature | | Registration No. (Attorney/Agent) | 26,032 |
| Name (Print/Type) | Marina V. Schneller | Telephone | (202) 344-4000 |
| | | Date | June 26, 2006 |



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Paul WANNINGER, et al.

Appln. No: 10/058,832

Confirmation No.: 2432

Filed: January 30, 2002

For: COMBUSTIBLE SHAPED
AMMUNITION PART

Art Unit: 3641

Examiner: A. Felton

Atty. Docket No: 32140-177788

Customer No.

26694

PATENT TRADEMARK OFFICE

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is filed in response to the Examiner's Answer of April 22, 2006.

No fee is believed due; however, should additional fees be due please charge the same to Deposit Account 22-0261.

The Notice of Appeal was filed on August 3, 2004.

STATUS OF CLAIMS

Claims 10-16 are under final rejection and are subject of this appeal.

Claims 1-9 were canceled in the November 24, 2003 response to the first Office action on the merits.

Claims 10-21 were presented in the November 24, 2003 Response.

In the July 3, 2004 AMENDMENT, claims 19-20 were canceled. In the July 3, 2004, AMENDMENT, Claim 16 was amended, and the Advisory Action of October 19, 2004 indicated that so amended Claim 16 would be entered for the purposes of appeal.

GROUND OF REJECTION to be REVIEWED ON APPEAL

Are Claims 10, 12, 13, 15, 16 [entered as amended by the October 19, 2004 Advisory Action], 18, 19, and 21 anticipated by U.S. Patent Nos. 3,426,684 and 3,403,625 to Jacobson et al.?

Are Claims 11, 14, 17, and 20 unpatentable under 35 U.S.C. 103 over U.S. Patent Nos. 3,426,684 and 3,403,625 to Jacobson et al, in view of Watson-Adams (USP 4,378,256) and Mosser et al (USP 4,724,172)?

ARGUMENT

Claim construction is prerequisite to the determinations under Section 102 and 103 of the Patent Statute. As indicated in the main brief, that appears to be official policy as enunciated in the MANUAL OF PATENT EXAMINING PROCEDURE [hereinafter "MPEP"], [MPEP, 2106.,II C. p 2100-7 Rev.2 May 2004]

Appealed Claims 10 and 16 recite

Claim 10. (Previously presented) A combustible shaped ammunition part wherein the *combustible shaped ammunition part* contains an erosion-reducing admixture, comprising an erosion-reducing agent which is an oxide of one of the elements of rare earth or one of the elements of the 6th subgroup in the periodic system, or a poly oxy methylene (POM), wherein the shaped ammunition part contains 2 to 15% of one or more erosion-reducing agent(s).

Claim 16. A combustible shaped ammunition part wherein the shaped ammunition part contains 2 to 15% of one or more erosion-reducing agent(s) and *wherein the combustible shaped ammunition part is in the form of a propellant case or a propellant charge container* and contains an erosion-reducing admixture, comprising an erosion-reducing agent which is an oxide of one of the elements of rare earth or one of the elements of the 6th subgroup in the periodic system, or a poly oxy methylene (POM).

The U.S. PTO reasons for rejecting claims for anticipation include the statement, "the additive can comprise of 3% of the propellant charge" (in connection with the analysis of the reference(s)). Please see the FINAL ACTION, February 3, 2004 Office Action at page 2, paragraph numbered 2.

Appellants' claims do not recite 3% of the propellant charge. Appellants' recitation concerning the amount of erosion-reducing agent is not 3% of the propellant charge. Rather, Appellants' claims recite, "... the shaped ammunition part contains 2 to 15% of one or more erosion-reducing agent(s)."

In setting forth the reasons for rejection, the MPEP indicates,

"Office personnel should make explicate findings on the similarities and differences..." [MPEP2144.08, IIA2., page 2100-154.

In this particular instance, the Office did not make—either during examination or on appeal--- an explicit finding concerning the difference(s) between that Jacobsons' *3% of the propellant charge* and the application claims, which recite that the shaped ammunition part contains 2-15% of an erosion-reducing agent(s). Specifically, the Office has constructively eliminated from the appealed claims express recitations.

The analysis made by the Office at page 4 of the Examiner's Answer is based on a newly cited unapplied reference U.S. 3730094. In applicants' view, the Board is without jurisdiction to consider the reference, in view of the facts, that this is the first citation of the reference and that the Office did not apply it against the claims: Alternatively, applicants submit that, if the Board finds that it is appropriate to consider U.S. 3730094, applicants advance the following: Combination of Jacobson with 3730094 is cumulative to the reasoning previously lodged by the Office:

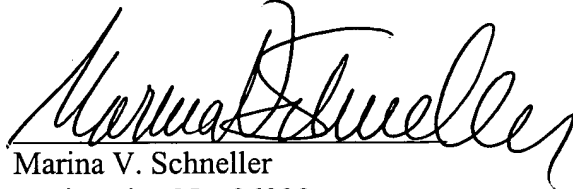
"[i]t is well-known in the bullet/cartridge making art that caseless cartridge [sic] are common and that these caseless cartridges consist only of a pressed propellant. Thus the ammunition part is the same as the

propellant... and can constitute the whole of the propellant charge." [page 4-5, Examiner's Answer].

Firstly the Patent Office ignores that the words "shaped" and "part" appear in the claims and that "propellant case" or "a propellant charge container" appear in e.g. claim 16. Secondly, that combination of references [teachings from Jacobson and US3730094] results in nothing more than the Patent Office previous reasoning that equated '3% of the propellant charge' to '2-15% of the combustible shaped ammunition part' [appealed claim 10] or '2-15% of the propellant case or a propellant charge container' [e.g. appealed claim 16]; this is of course erroneous. Claims 13-16 implicitly exclude propellant as the basis for the percentage of 2-15%.

Lastly the Examiner's Answer states that "there is no indication that Applicant's invention would perform any differently than that of the prior art". As a matter of simple reasoning, the amount of 2-15% in the "shaped ammunition part" of e.g. claim 1, or of the "propellant case or container" of Claims 12-16" container is drastically less than 3% of the propellant charge.

Respectfully submitted,



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